

IN THE  
*SUPREME COURT OF THE UNITED STATES*  
October Term, 1987

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
Petitioner,  
v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
Respondent.

**PETITIONER'S SUPPLEMENTAL BRIEF**

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Pursuant to Rule 22.6 of the Rules of the Supreme Court of the United States, Petitioner, The Pittsburgh & Lake Erie Railroad Company ("P&LE"), hereby files this Supplemental Brief to inform the Court of a recent development in this case.

P&LE filed a petition for a writ of certiorari on March 24, 1988, seeking review of an October 26, 1987 opinion of the United States Court of Appeals for the Third Circuit. At the time of the filing of P&LE's petition for certiorari, the Third Circuit had under review a related, second appeal in this case. On April 8, 1988 (after P&LE had filed its petition) the Third Circuit issued its opinion in this second appeal,<sup>1</sup> denying P&LE's request for reversal of the decision of the United States District Court for the Western District of Pennsylvania.

P&LE intends to file another petition for certiorari within the next several weeks seeking review of the second and final Third Circuit decision in this action.<sup>2</sup> The important issues raised by each decision in this case independently warrant review, and may, in the Court's discretion, warrant consolidated review, as they arise out of a common set of facts. In the first appeal, the Third Circuit considered whether Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, deprived the district court of jurisdiction to enjoin a strike designed to block the sale of a railroad, when that sale had been authorized by the ICC. In the second appeal, the court considered whether a railroad that plans to go completely out of business as a railroad has a duty to exhaust the Railway Labor Act's protracted

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<sup>1</sup> Copies of this decision will be filed with P&LE's Supplemental Brief.

<sup>2</sup> The Interstate Commerce Commission ("ICC") was a party to this second appeal, and the United States may also file a petition for certiorari. The National Railway Labor Conference has filed an *amicus* brief in support of P&LE's first petition for certiorari and is likely to file in support of the next petition.

bargaining requirements before it completes a sale of its assets, when that decision has been authorized by the ICC, which has exclusive jurisdiction to approve the sale and to protect the legitimate interests of labor. In both instances, P&LE argued that the Interstate Commerce Act governed the transaction and prevented the unions' attempt to block the sale, either by strike or by the assertion of inconsistent Railway Labor Act obligations.

In its second decision, the Third Circuit expressly recognized that P&LE may, as a result of its decision, soon be forced into financial ruin, stating:

We are fully aware of the unfortunate ramifications and irony of our decision. A bargaining order, and a status quo injunction, designed to foster conciliation, promote labor peace, and ultimately keep the rails running, may ultimately have the perverse effect of destroying the only chance P&LE has for survival and perhaps even the very jobs that the unions are now trying to protect.

Slip op. at 57.

P&LE intends to file a Motion for Expedited Consideration with its second petition for certiorari, asking the Court to consider both petitions in time for the case to be heard in the early fall. As will be explained more fully in that Motion, P&LE will request that the Court review and decide these issues during the fall term. P&LE must determine, at the earliest possible date, whether it has the right to sell its railroad assets to the buyer of its choice on its terms or whether its only options are as they stand now; *i.e.*,

liquidation or, if possible, the sale of the railroad to a buyer under terms approved by all fourteen of P&LE's unions.

Respectfully submitted,

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Dated: April 27, 1988